SINGAPORE REPORTS

CHAN CHOR TNG & ORS. v. HOUSING & URBAN DEVELOPMENT CO. (PTE.) LTD.

[O.C.J. (Wee Chong Jin C.J.) October 9, 1980]

[Singapore — Civil Suit No. 1726 of 1978]

Contract — Innocent misrepresentation not amounting to warranty — Building with panoramic view — Objection by residents to erection of high-rise flats blocking view.

Housing Developers — Innocent misrepresentation.

The plaintiffs were residents of a maisonette block in Amber Estate developed by the defendants. The plaintiffs claimed that in each of their respective contracts a term would be implied that the defendants would develop Amber Estate, insofar as the siting, positioning and orientation of the buildings to be erected thereon, in accordance with the Layout Plan of the defendants' brochure. The plaintiffs alleged that the defendants, by "proposing to make material alterations and variations to the site layout, namely the erection of a 13-storey block of maisonettes in place of the said 2-storey town houses" without the consent of the plaintiffs, were in breach of the said contract. The plaintiffs also contended that the defendants intended to act "falsely and contrary to the representations made by them to the purchasers and each of them in and by the said brochure."

Held, dismissing the plaintiffs' claim: (1) there was no implied term or condition in the contracts of the plaintiffs that the defendants would develop Amber Estate, insofar as the siting, positioning and orientation of the buildings to be erected thereon, in accordance with the Layout Plan of the defendants' brochure;

(2) the defendants' representation was an innocent misrepresentation which was not a term of the contract and did not amount to a warranty;

(3) the plaintiffs were attracted by the statement in the brochure that the "development offers residents a panoramic view of the sea and the neighbouring islands". On the evidence, Amber Estate, as subsequently developed, offers a panoramic view of the sea and the surrounding islands.

Case referred to:-

(1) *Shirlaw* v. *Southern Foundries (1926) Ltd.* [1939] 2 K.B. 206, 227.

CIVIL SUIT.

K.E. Hilborne for the plaintiffs.

J. Grimberg (*S.T. Chan* with him) for the defendants.

Cur. Adv. Vult.

Wee Chong Jin C.J.: The defendants, Housing & Urban Development Co. (Pte) Ltd. were incorporated on February 4, 1974 and are jointly owned by the Housing & Development Board and the Urban Redevelopment Authority. Its main object is to construct quality flats or housing units in good residential areas for sale to middle-income Singapore citizens and certain categories of permanent residents whose total family income does not exceed $4,000 per month. Purchasers of the flats or units built by the defendants are eligible to use their Central Provident Fund monies to pay for the purchase price of their flats or units.

In furtherance of this main object, the defendants published in March/April 1975 a printed coloured brochure (a copy of which is in evidence as Exhibit A) entitled "Middle Income Housing". It contained 24 pages and was available to the public from March/April 1975 at the price of $5 per copy. At pages 1 and 2 under the heading "Introduction" appear the following words:—

"Each estate is situated in an exclusive and quiet residential area which is between 6.4 km and 11.2 km (4 and 7 miles) or about 15 to 20 minutes drive from the City Centre. The housing estates are also in close proximity to entertainment and commercial centres.

The Estates

The Brochure provides information on middle income housing to be developed by the company at five selected estates:—

1) Lakeview; 2) Farrer; 3) Amber; 4) Braddell Rise; 5) East Coast

Lakeview

....

Farrer

....

Amber

A new residential high and low-rise development comprising 210 units of flats and maisonettes will be built on the reclaimed land near the Chinese Swimming Club.

The residential development offers residents a panoramic view of the sea and neighbouring islands to the south. A wide range of recreational facilities are available for swimming, boating and cycling at the reclaimed land and beach nearby. Residents can also enjoy the shopping facilities available at the existing Katong Shopping Centre and the future Marine Parade Centre, both of which are within walking distances.

Braddell Rise

....

East Coast

....

Site layout plans and external perspectives for each estate are shown on pages 6 to 15.

Choice of Flats

The five housing estates will have Type A and Type B high-rise flats, and low-rise walk-up flats. Details are:—

Type A

....

Type B

....

Type A (Maisonettes)

Two levelled flats (lower and upper floors). Floor Area: 158 sq. m. (1,700 sq. ft.) (approx). Access is at the lower level which consists of living room, dining room, kitchen, balcony, utility room and toilet.

Access to upper floor is by internal staircase. The bedrooms are situated on this floor which comprises a master bedroom (with bathroom and WC attached), 2 bedrooms and 1 bathroom and W.C.

Price range similar to Type A.

The types of accommodation available and the detailed floor plans for each type are shown on pages 16 to 22."

Pages 3 and 4 contain the "General Specifications" of the flats or housing units in the five estates and page 5 shows the geographical location of the five estates and page 10 contains the Layout Plan for Amber Estate.

When the writ in this action was issued on June 2, 1978 there were 17 plaintiffs. At the commencement of the trial five of the 17 plaintiffs were granted leave to discontinue their claims. They were the 1st, 3rd, 9th, 12th and 16th plaintiffs.

Each of the remaining twelve plaintiffs entered into a contract for sale with the defendants in August 1976 of a Type A (Maisonette) flat in Amber Estate. All the flats purchased by the plaintiffs are in a 25-storey block which is the maisonette block shown in

the Layout Plan for Amber Estate nearest to East Coast Parkway and is numbered "Block 2". The contracts they entered into are in printed form and one such contract appears at pages 39 to 44 of the Agreed Bundle of Documents (Exhibit AB).

The Layout Plan for Amber Estate (page 10 of Exhibit A) shows the layout and siting of the five proposed blocks of flats, maisonette flats and townhouses to be built on Amber Estate. Another maisonette block is numbered "Block 1" in the Amber Estate Layout Plan. The defendants had decided to abandon building Block 1 two months before the contracts were entered into by the plaintiffs in August 1976 because of piling problems.

The Layout Plan also shows the site of two blocks of proposed 2-storey town houses which are numbered "Block 3" and "Block 4". Subsequently it was found that piling was necessary for Block 4 and in February/March 1977 it was decided to abandon building this block of 2-storey town houses on the intended site as it was uneconomical and out of proportion to the likely recovery in terms of sales of the units comprising this block. In mid 1977 a decision was made by the defendants to build on the intended site of the abandoned Block 4 town houses a 13-storey block of maisonettes and piling work commenced in September 1977.

In June 1978 the plaintiffs commenced the present action. In paragraph 2 of their statement of claim they alleged that

"they entered into a contract with the defendants for the purchase of a maisonette as hereinafter appears on the basis of (the Brochure) or advertisement and the contents thereof, and in reliance particularly on the siting, positioning and orientation of the said buildings, shops, open spaces and access roads shown therein."

In paragraph 3 of their statement of claim as amended at the trial they alleged that "it was an implied term of such contract that the Amberville development would in all material aspects be in accordance with the said Brochure or advertisement, and that the siting, positioning and orientation of (*inter alia*) the buildings comprising the same would be as shown in the Layout Plan relating to Amberville. Further or in the alternative, the defendants represented to the plaintiffs by means of the said Brochure or advertisement and the Sketch Plan annexed to the agreement for sale between the defendants and the plaintiffs that the siting, positioning and orientation of (*inter alia*) the buildings would be as so advertised."

In paragraph 4 of the statement of claim they alleged that the Brochure shows that Block 2 comprising 25 stories has "an unobstructed and unimpeded panoramic view except for a proposed development of 2-storey town houses on the south-eastern aspect of Block 2."

Paragraph 5 of the statement of claim alleged as follows:—

"The defendants without the knowledge or consent of the plaintiffs or any of them and in breach of the said contract or, alternatively, falsely and contrary to the representations made by them to the purchasers and each of them in and by the said brochure or advertisement wrongfully made or are now proposing to make material alterations and variations to the site layout, namely the erection of a 13-storey block of maisonettes in place of the said 2-storey townhouses."

Paragraph 6 of the statement of claim alleged as follows:—

"The plaintiffs and each of them aver that if the defendants are permitted to build the said 13-storey block of maisonettes their enjoyment of the maisonettes purchased by them will be materially substantially and permanently impaired by reason of the proximity of the same and the obstruction and interference thereby of the plaintiffs' panoramic views. Further the plaintiffs and each of them aver that the said 13-storey block would further materially substantially and permanently affect the plaintiffs' enjoyment of the said maisonettes by reason of the diminished aesthetic and/or environmental conditions arising out of the proposed siting and positioning of the same. Further the plaintiffs and each of them say that they would suffer pecuniary loss and damage by reason of the deterioration in value of their maisonettes by reason of the matters hereinbefore recited."

Before the trial of the action the plaintiffs in an interlocutory application sought an interim injunction to prevent the defendants from proceeding to erect the 13-storey block of maisonettes on the site of the intended Block 4 of 2-storey town houses and filed affidavits in support thereof. The defendants opposed the application and filed affidavits in opposition thereto. The application was unsuccessful. At the trial the plaintiffs called no evidence, it being agreed that the affidavits filed in the interlocutory application be admitted as evidence in the trial without calling the deponents. It is common ground that when the trial commenced all the plaintiffs had been given possession of the flats in the 25-storey maisonette Block 2.

It appears from the statement of claim that each of the plaintiffs alleged:—

"1. It is an implied term of each of the contracts of sale of each of the maisonette flats described in each of the agreements that the development of Amber Estate would be in accordance with the Brochure published in March/April 1975 and that the siting, positioning and orientation of the buildings comprising the Amber Estate development would be as shown in the Layout Plan relating to Amber Estate as appears in the Brochure.

2. Further and in the alternative, the defendants by the Brochure and the sketch plan attached to the sale agreement represented to each plaintiff that the siting, positioning and orientation of the buildings comprising the Amber Estate development would be as appears in the Brochure."

I find on the evidence before me the following facts. In 1975 the defendants intended to build on Amber Estate a "residential high and low-rise development comprising 210 units of flats and maisonettes ... on reclaimed land ... (which) offers residents a panoramic view of the sea and neighbouring islands to the south." These units would be comprised of two blocks of high-rise maisonettes, two blocks of 2-storey town houses and one block of 13-storey flats and these five blocks of residential units would be sited as shown at page 10 of their Brochure, copies of which were available to interested purchasers at $5 per copy.

The 2nd plaintiff, Chong Kam Hoong, chose a maisonette in Block 2 because he "liked the locality and the fact that the maisonettes had a clear view of the sea."

The 4th plaintiff, Chye Min Fui, said he and his wife "liked the area and the layout of the estate, particularly the view of the sea and the low density building."

The 5th plaintiff, Lee Eng Guan, said he was "interested in the project because of its locality and

(the) fact that it was beside the sea." He "studied the layout . . . and noted that . . . the maisonettes would have unobstructed views of the sea."

The 6th plaintiff, Lee Seng Poh, said:

"Eventually, I signed a contract with the defendants but I recall I specifically asked the defendants' then assistant secretary, Mr. Chen Nan Fong, whether there would be any alterations to the plan. He assured me that that would not be the case and that the published layout plan in the brochure would be adhered to. On receiving this assurance I agreed to sign the contract."

The 7th plaintiff, Leong Choon Fai, did not say why he purchased a maisonette in Block 2. He said he objected to the departure from the original layout plan since that "would clearly spoil (his) view and diminish the enjoyment and the amenities of (his) maisonette as shown on the original layout."

The 8th plaintiff, Lim Hock Thiam, said that he noted from the Brochure "the general layout of the estate and the fact that there would have no obstruction of the view of the sea from Block 2." He said he entered into a contract "on the basis of (the defendants') published brochure and . . . the layout therein."

The 10th plaintiff, Low Lam Piew and the 11th plaintiff, A.R. Majid, adduced no evidence in support of their claims.

The 13th plaintiff, A.K.B. Shah, did not say why he purchased a maisonette in Block 2. He merely said that he was particularly attracted to the Amber Estate development "by the fact that it consisted of only a few buildings and therefore was a low density development."

The 14th plaintiff, William Tan Keng Ann, did not say why he purchased a maisonette in Block 2. He said that the Brochure "presented a new concept in living in a favourable locality and in desirable surroundings where one could obtain a panoramic view of the sea as was pointed out in the brochure itself."

The 15th plaintiff, Yang Chui Ming, said he particularly relied on the layout both in the brochure and the sales agreement insofar as it showed that "we would have an unobstructed view from the maisonette across to the sea, the buildings in front of us only being 2-storey town houses."

The 17th plaintiff, Yung Chee Kong, did not say why he purchased a maisonette in Block 2. He merely said that when he learnt of the proposed erection of a 13-storey building instead of the 2-storey town houses in Block 4 he "was very angry because it was obvious that this building would, if erected, spoil the view and outlook from (his) own maisonette."

The plaintiffs' case is that in each of their respective contracts a term will be implied that the defendants will develop Amber Estate, insofar as the siting, positioning and orientation of the buildings to be erected thereon, in accordance with the Layout Plan at page 10 of the defendants' Brochure (Exhibit A). In my judgment there is no such implied term or condition in any of the contracts in question. The test to be applied is as formulated by MacKinnon L.J. in *Shirlaw* v. *Southern Foundries*[1] which reads as follows:—

> "*Prima facie* that which in any contract is left to be implied and need not be expressed is something so obvious that it goes without saying; so that, if, while the parties were making their bargain, an officious bystander were to suggest some express provision for it in their agreement, they would testily suppress him with a common 'Oh, of course!'"

Applying that test in this case it is inconceivable, having regard to the factual situation in August 1976 and to the nature of the contract itself, that the defendants if asked whether it would not be well to put in a provision that they would not deviate in any manner whatsoever from the siting, positioning and orientation of the buildings to be erected as shown in the Layout Plan at page 10 of the Brochure (Exhibit A) would, without hesitation have said "of course, that is implied!"

I turn now to consider the alternative claim that the defendants by the Brochure and the sketch plan attached to each of the contracts represented to each plaintiff that the siting, positioning and orientation of the buildings comprising the Amber Estate development would be as appears in the Brochure. It is not alleged that the plaintiffs had acted on that representation. What is alleged appears in paragraph 5 of the statement of claim wherein it is alleged that the defendants, by "proposing to make material alterations and variations to the site layout, namely the erection of a 13-storey block of maisonettes in place of the said 2-storey town houses" without the consent of the plaintiffs, are in breach of the said contract or, alternatively, intending to act "falsely and contrary to the representations made by them to the purchasers and each of them in and by the said brochure."

None of the plaintiffs except one, in their affidavit evidence say they relied on or was induced by that representation to enter into their respective contracts with the defendants. The exception was the 6th plaintiff, Lee Seng Poh, whose evidence I have set out earlier but which I find hard to accept. In any event, I find that even if the assurance had been given by the then assistant secretary to the defendants that the published layout plan in the Brochure would be adhered to it was not pleaded by the 6th plaintiff that he relied on or was induced by that assurance to enter into a contract with the defendants. Furthermore, in my judgment, it was an innocent misrepresentation which was not a term of the contract and it did not amount to a warranty.

The truth of the matter is, as can be seen from the evidence of the twelve remaining plaintiffs which I have set out earlier, that they were attracted by the concept as stated in the Introduction (page 1 of the Brochure) and the statement therein relating to Amber Estate that this "development offers residents a panoramic view of the sea and the neighbouring islands." I find on the evidence before me that Amber Estate, as subsequently developed, offers a panoramic view of the sea and the surrounding islands. In my judgment the plaintiffs have failed to prove their claim in the action and there must be judgment for the defendants with costs.

Claim dismissed.

Solicitors: *Hilborne & Co.; Boswell, Hsieh & Lim.*